

REMARKS

The withdrawal of the final rejection of October 9, 2003 maintaining a rejection of the drawings as insufficient to satisfy 37 CFR 1.83(a) is appreciated. The Patent Office change of personnel due to retirement of Examiner Anderson who had indicated allowability of claims 5, 6 and 7 in the final action of October 9, 2003, and the current rejection of claims 5, 6 and 7 based upon the prior art previously of record and upon indefiniteness of claim 5 is noted.

While Applicant believes the language of claim 5 as filed February 12, 2004 was definite, by the present amendment, recitation of additional structure of the second lock has been added, and the term "engageable" eliminated. It is submitted that as now presented, claim 5 as well as dependent claims 6 and 7 are definite and the drawings filed February 12, 2004 and accepted in the Patent Office action of May 5, 2004 illustrate sufficiently an embodiment of the claimed features. Accordingly, it is submitted that claims 5, 6 and 7 are in condition for allowance as to form.

On the merits of Applicant's claimed invention, claims 5, 6 and 7 stand rejected under 35 USC §103(a) as unpatentable over Householder 3,804,294 (patented April 16, 1974) in view of Bolen 3,783,986 (patented (January 8, 1974) and Jones 2,696,324 (patented December 7, 1954).

The Examiner states that Householder shows all of the elements of claims 5, 6 and 7, but then notes that Householder does not show the base top frame, or the second lock. As Applicant has observed during the prior prosecution, Householder is an illustration of the problem, not its solution. The crack-back condition is illustrated in Figure 9 of Householder, wherein the front wall can pivot forward when the container is tilted backwardly.

Applicant's claim 5 calls for a second lock which locks the container frame to the base when the container frame is not separated from the base top frame. This second lock operates

in combination in and with structure which had been found pilferable upon forced container tilting, and has successfully eliminated the problem.

That Applicant's solution was "obvious" is manifestly erroneous. The problem arose in about 1974, thirty years ago. The problem existed a generation without solutions until the present application. A thirty year hiatus strongly confirms that the improvement claimed is unobvious, and patentable!

While Jones shows a base type lock, it is not in combination with a container top lock crack-back system and suggests no such conditions. Contrary to the Examiner's suggestion, 84 in Jones, only locks the merchandise, not the lid 352. The Jones lid is secured to the frame 310 which is secured by peripheral rods 320 to the frame 300. This arrangement is highly complex and provides no suggestions of a lock at the mid portion of the lid, where the lid is deflectable to allow lifting of the container frame. Jones has existed 50years, in the same field as the examiner notes, without providing the solution in 1974 or for 25 years thereafter.

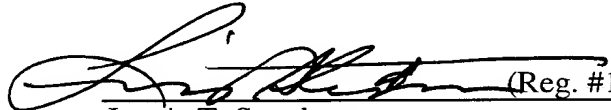
Bolen shows a base top frame, but no container frame or any related tilt actuated base front wall release. There is no suggestion in Jones or Bolen or Householder for combining a crack-back lid lock apparatus with a second base-to-container frame lock integrated into the base and interlocking container frame assembly as fully recited in Applicant's claim 5. The only suggestion for the combination claimed is in Applicant's specification here. In the CAFC decision in Symbol Technologies v. Opticon, 19 USPQ2d 1241, 1246 (CAFC 1991) the court observed..."we do not pick and choose among the individual elements of assorted prior art references to recreate the claimed invention "but rather, we look for "some teaching or suggestion in the references to support their use in the particular claimed combinations. "...Smith Kline Diagnostics Inc. v. Helena Laboratories Corp., 8 USPQ2d 1468, 1475 (CAFC 1988). " Similarly, in Gillette Co. v. S.C. Johnson & Sons, 16 USPQ2d 1923, 1926

(CAFC 1990) the Court affirmed the lower Court's requirement that the claims be clearly suggested by the art.

Accordingly, it is submitted that Applicant's now more clearly definitive claim 5 and unamended dependent claims 6 and 7, were, and are, not obvious under 35 USC §103(a) and are patentable to Applicant. It is submitted that all matters of form and substance have been resolved and issuance is earnestly solicited.

Respectfully submitted,

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